

FIRST REGULAR SESSION
HOUSE COMMITTEE SUBSTITUTE FOR
HOUSE BILL NO. 939
102ND GENERAL ASSEMBLY

2114H.02C

DANA RADEMAN MILLER, Chief Clerk

AN ACT

To repeal sections 620.2005 and 620.2015, RSMo, and to enact in lieu thereof two new sections relating to the Missouri works program.

Be it enacted by the General Assembly of the state of Missouri, as follows:

Section A. Sections 620.2005 and 620.2015, RSMo, are repealed and two new
2 sections enacted in lieu thereof, to be known as sections 620.2005 and 620.2015, to read as
3 follows:

620.2005. 1. As used in sections 620.2000 to 620.2020, the following terms mean:

2 (1) "Average wage", the new payroll divided by the number of new jobs, or the
3 payroll of the retained jobs divided by the number of retained jobs;

4 (2) "Commencement of operations", the starting date for the qualified company's first
5 new employee, which shall be no later than twelve months from the date of the approval;

6 (3) "Contractor", a person, employer, or business entity that enters into an agreement
7 to perform any service or work or to provide a certain product in exchange for valuable
8 consideration. This definition shall include but not be limited to a general contractor,
9 subcontractor, independent contractor, contract employee, project manager, or a recruiting or
10 staffing entity;

11 (4) "County average wage", the average wages in each county as determined by the
12 department for the most recently completed full calendar year. However, if the computed
13 county average wage is above the statewide average wage, the statewide average wage shall
14 be deemed the county average wage for such county for the purpose of determining eligibility.
15 The department shall publish the county average wage for each county at least annually.
16 Notwithstanding the provisions of this subdivision to the contrary, for any qualified company
17 that in conjunction with their project is relocating employees from a Missouri county with a

EXPLANATION — Matter enclosed in bold-faced brackets **[thus]** in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

18 higher county average wage, the company shall obtain the endorsement of the governing body
19 of the community from which jobs are being relocated or the county average wage for their
20 project shall be the county average wage for the county from which the employees are being
21 relocated;

22 (5) "Department", the Missouri department of economic development;

23 (6) "Director", the director of the department of economic development;

24 (7) "Employee", a person employed by a qualified company, excluding:

25 (a) Owners of the qualified company unless the qualified company is participating in
26 an employee stock ownership plan; or

27 (b) Owners of a noncontrolling interest in stock of a qualified company that is
28 publicly traded;

29 (8) "Existing Missouri business", a qualified company that, for the ten-year period
30 preceding submission of a notice of intent to the department, had a physical location in
31 Missouri and full-time employees who routinely performed job duties within Missouri;

32 (9) "Full-time employee", an employee of the qualified company that is scheduled to
33 work an average of at least thirty-five hours per week for a twelve-month period, and one for
34 which the qualified company offers health insurance and pays at least fifty percent of such
35 insurance premiums. An employee that spends less than fifty percent of the employee's work
36 time at the facility shall be considered to be located at a facility if the employee receives his
37 or her directions and control from that facility, is on the facility's payroll, one hundred percent
38 of the employee's income from such employment is Missouri income, and the employee is
39 paid at or above the applicable percentage of the county average wage;

40 (10) "Industrial development authority", an industrial development authority
41 organized under chapter 349 that has entered into a formal written memorandum of
42 understanding with an entity of the United States Department of Defense regarding a
43 qualified military project;

44 (11) "Infrastructure projects", highways, roads, streets, bridges, sewers, traffic control
45 systems and devices, water distribution and supply systems, curbing, sidewalks, storm water
46 and drainage systems, broadband internet infrastructure, and any other similar public
47 improvements, but in no case shall infrastructure projects include private structures;

48 (12) "Local incentives", the present value of the dollar amount of direct benefit
49 received by a qualified company for a project facility from one or more local political
50 subdivisions, but this term shall not include loans or other funds provided to the qualified
51 company that shall be repaid by the qualified company to the political subdivision;

52 (13) "Manufacturing capital investment", expenditures made by a qualified
53 manufacturing company to retool or reconfigure a manufacturing project facility directly

54 related to the manufacturing of a new product or the expansion or modification of the
55 manufacture of an existing product;

56 (14) "Memorandum of understanding", an agreement executed by an industrial
57 development authority and an entity of the United States Department of Defense, a copy of
58 which is provided to the department of economic development, that states, but is not limited
59 to:

60 (a) A requirement for the military to provide the total number of existing jobs, jobs
61 directly created by a qualified military project, and average salaries of such jobs to the
62 industrial development authority and the department of economic development annually for
63 the term of the benefit;

64 (b) A requirement for the military to provide an accounting of the expenditures of
65 capital investment made by the military directly related to the qualified military project to the
66 industrial development authority and the department of economic development annually for
67 the term of the benefit;

68 (c) The process by which the industrial development authority shall monetize the tax
69 credits annually and any transaction cost or administrative fee charged by the industrial
70 development authority to the military on an annual basis;

71 (d) A requirement for the industrial development authority to provide proof to the
72 department of economic development of the payment made to the qualified military project
73 annually, including the amount of such payment;

74 (e) The schedule of the maximum amount of tax credits which may be authorized in
75 each year for the project and the specified term of the benefit, as provided by the department
76 of economic development; and

77 (f) A requirement that the annual benefit paid shall be the lesser of:

78 a. The maximum amount of tax credits authorized; or

79 b. The actual calculated benefit derived from the number of new jobs and average
80 salaries;

81 (15) "NAICS" or "NAICS industry classification", the classification provided by the
82 most recent edition of the North American Industry Classification System as prepared by the
83 Executive Office of the President, Office of Management and Budget;

84 (16) "New capital investment", shall include costs incurred by the qualified company
85 at the project facility after acceptance by the qualified company of the proposal for benefits
86 from the department or the approval notice of intent, whichever occurs first, for real or
87 personal property, and may include the value of finance or capital leases for real or personal
88 property for the term of such lease at the project facility executed after acceptance by the
89 qualified company of the proposal for benefits from the department or the approval of the
90 notice of intent;

91 (17) "New direct local revenue", the present value of the dollar amount of direct net
92 new tax revenues of the local political subdivisions likely to be produced by the project over a
93 ten-year period as calculated by the department, excluding local earnings tax, and net new
94 utility revenues, provided the local incentives include a discount or other direct incentives
95 from utilities owned or operated by the political subdivision;

96 (18) "New job", the number of full-time employees located at the project facility that
97 exceeds the project facility base employment less any decrease in the number of full-time
98 employees at related facilities below the related facility base employment. No job that was
99 created prior to the date of the notice of intent shall be deemed a new job;

100 (19) "New payroll", the amount of wages paid for all new jobs, located at the project
101 facility during the qualified company's tax year that exceeds the project facility base payroll;

102 (20) "New product", a new model or line of a manufactured good that has not been
103 manufactured in Missouri by a qualified manufacturing company at any time prior to the date
104 of the notice of intent, or an existing brand, model, or line of a manufactured good that is
105 redesigned;

106 (21) "Notice of intent", a form developed by the department and available online,
107 completed by the qualified company, and submitted to the department stating the qualified
108 company's intent to request benefits under this program. The notice of intent shall be
109 accompanied with a detailed plan by the qualifying company to make good faith efforts to
110 employ, at a minimum, commensurate with the percentage of minority populations in the state
111 of Missouri, as reported in the previous decennial census, the following: racial minorities,
112 contractors who are racial minorities, and contractors that, in turn, employ at a minimum
113 racial minorities commensurate with the percentage of minority populations in the state of
114 Missouri, as reported in the previous decennial census. At a minimum, such plan shall
115 include monitoring the effectiveness of outreach and recruitment strategies in attracting
116 diverse applicants and linking with different or additional referral sources in the event that
117 recruitment efforts fail to produce a diverse pipeline of applicants;

118 (22) "Percent of local incentives", the amount of local incentives divided by the
119 amount of new direct local revenue;

120 (23) "Program", the Missouri works program established in sections 620.2000 to
121 620.2020;

122 (24) "Project facility", the building or buildings used by a qualified company at which
123 new or retained jobs and any new capital investment are or will be located or by a qualified
124 manufacturing company at which a manufacturing capital investment is or will be located. A
125 project facility may include separate buildings located within sixty miles of each other such
126 that their purpose and operations are interrelated; provided that where the buildings making
127 up the project facility are not located within the same county, the average wage of the new

128 payroll shall exceed the applicable percentage of the highest county average wage among the
129 counties in which the buildings are located. Upon approval by the department, a subsequent
130 project facility may be designated if the qualified company demonstrates a need to relocate to
131 the subsequent project facility at any time during the project period. For qualified military
132 projects, the term "project facility" means the military base or installation at which such
133 qualified military project is or shall be located;

134 (25) "Project facility base employment", the greater of the number of full-time
135 employees located at the project facility on the date of the notice of intent or, for the twelve-
136 month period prior to the date of the notice of intent, the average number of full-time
137 employees located at the project facility. In the event the project facility has not been in
138 operation for a full twelve-month period, the average number of full-time employees for the
139 number of months the project facility has been in operation prior to the date of the notice of
140 intent;

141 (26) "Project facility base payroll", the annualized payroll for the project facility base
142 employment or the total amount of taxable wages paid by the qualified company to full-time
143 employees of the qualified company located at the project facility in the twelve months prior
144 to the notice of intent. For purposes of calculating the benefits under this program, the
145 amount of base payroll shall increase each year based on an appropriate measure, as
146 determined by the department;

147 (27) "Project period", the time period within which benefits are awarded to a qualified
148 company or within which the qualified company is obligated to perform under an agreement
149 with the department, whichever is greater;

150 (28) "Projected net fiscal benefit", the total fiscal benefit to the state less any state
151 benefits offered to the qualified company, as determined by the department;

152 (29) "Qualified company", a firm, partnership, joint venture, association, private or
153 public corporation whether organized for profit or not, or headquarters of such entity
154 registered to do business in Missouri that is the owner or operator of a project facility,
155 certifies that it offers health insurance to all full-time employees of all facilities located in this
156 state, and certifies that it pays at least fifty percent of such insurance premiums. For the
157 purposes of sections 620.2000 to 620.2020, the term "qualified company" shall not include:

158 (a) Gambling establishments (NAICS industry group 7132);

159 (b) Store front consumer-based retail trade establishments (under NAICS sectors 44
160 and 45), except with respect to any company headquartered in this state with a majority of its
161 full-time employees engaged in operations not within the NAICS codes specified in this
162 subdivision and except for any such establishments located in a county of the **second**, third, or
163 fourth classification;

164 (c) Food and drinking places (NAICS subsector 722);

- 165 (d) Public utilities (NAICS 221 including water and sewer services);
- 166 (e) Any company that is delinquent in the payment of any nonprotested taxes or any
167 other amounts due the state or federal government or any other political subdivision of this
168 state;
- 169 (f) Any company requesting benefits for retained jobs that has filed for or has
170 publicly announced its intention to file for bankruptcy protection. However, a company that
171 has filed for or has publicly announced its intention to file for bankruptcy may be a qualified
172 company provided that such company:
- 173 a. Certifies to the department that it plans to reorganize and not to liquidate; and
- 174 b. After its bankruptcy petition has been filed, it produces proof, in a form and at
175 times satisfactory to the department, that it is not delinquent in filing any tax returns or
176 making any payment due to the state of Missouri, including but not limited to all tax
177 payments due after the filing of the bankruptcy petition and under the terms of the plan of
178 reorganization. Any taxpayer who is awarded benefits under this subsection and who files for
179 bankruptcy under Chapter 7 of the United States Bankruptcy Code, Title 11 U.S.C., shall
180 immediately notify the department and shall forfeit such benefits and shall repay the state an
181 amount equal to any state tax credits already redeemed and any withholding taxes already
182 retained;
- 183 (g) Educational services (NAICS sector 61);
- 184 (h) Religious organizations (NAICS industry group 8131);
- 185 (i) Public administration (NAICS sector 92);
- 186 (j) Ethanol distillation or production;
- 187 (k) Biodiesel production; or
- 188 (l) Health care and social services (NAICS sector 62).
- 189
- 190 Notwithstanding any provision of this section to the contrary, the headquarters, administrative
191 offices, or research and development facilities of an otherwise excluded business may qualify
192 for benefits if the offices or facilities serve a multistate territory. In the event a national, state,
193 or regional headquarters operation is not the predominant activity of a project facility, the jobs
194 and investment of such operation shall be considered eligible for benefits under this section if
195 the other requirements are satisfied;
- 196 (30) "Qualified manufacturing company", a company that:
- 197 (a) Is a qualified company that manufactures motor vehicles (NAICS group 3361);
- 198 (b) Manufactures goods at a facility in Missouri;
- 199 (c) Manufactures a new product or has commenced making a manufacturing capital
200 investment to the project facility necessary for the manufacturing of such new product, or
201 modifies or expands the manufacture of an existing product or has commenced making a

202 manufacturing capital investment for the project facility necessary for the modification or
203 expansion of the manufacture of such existing product; and

204 (d) Continues to meet the requirements of paragraphs (a) to (c) of this subdivision for
205 the project period;

206 (31) "Qualified military project", the expansion or improvement of a military base or
207 installation within this state that causes:

208 (a) An increase of ten or more part-time or full-time military or civilian support
209 personnel:

210 a. Whose average salaries equal or exceed ninety percent of the county average wage;
211 and

212 b. Who are offered health insurance, with an entity of the United States Department
213 of Defense paying at least fifty percent of such insurance premiums; and

214 (b) Investment in real or personal property at the base or installation expressly for the
215 purposes of serving a new or expanded military activity or unit.

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217 For the purposes of this subdivision, part-time military or civilian support personnel shall be
218 converted to full-time new jobs by, in hire date order, counting one full-time new job for
219 every thirty-five averaged hours worked per week by part-time military or civilian support
220 personnel in jobs directly created by the qualified military project. For each such full-time
221 new job, the sum of the wages of the part-time military or civilian support personnel
222 combined and converted to form the new job shall be the wage for the one full-time new job.
223 Each part-time military or civilian support personnel whose job is combined and converted
224 for such a full-time new job shall be offered health insurance as described in subparagraph b
225 of paragraph (a) of this subdivision;

226 (32) "Related company", shall mean:

227 (a) A corporation, partnership, trust, or association controlled by the qualified
228 company;

229 (b) An individual, corporation, partnership, trust, or association in control of the
230 qualified company; or

231 (c) Corporations, partnerships, trusts or associations controlled by an individual,
232 corporation, partnership, trust, or association in control of the qualified company. As used in
233 this paragraph, "control of a qualified company" shall mean:

234 a. Ownership, directly or indirectly, of stock possessing at least fifty percent of the
235 total combined voting power of all classes of stock entitled to vote in the case of a qualified
236 company that is a corporation;

237 b. Ownership of at least fifty percent of the capital or profit interest in such qualified
238 company if it is a partnership or association;

239 c. Ownership, directly or indirectly, of at least fifty percent of the beneficial interest
240 in the principal or income of such qualified company if it is a trust, and ownership shall be
241 determined as provided in Section 318 of the Internal Revenue Code of 1986, as amended;

242 (33) "Related facility", a facility operated by the qualified company or a related
243 company located in this state that is directly related to the operations of the project facility or
244 in which operations substantially similar to the operations of the project facility are
245 performed;

246 (34) "Related facility base employment", the greater of the number of full-time
247 employees located at all related facilities on the date of the notice of intent or, for the twelve-
248 month period prior to the date of the notice of intent, the average number of full-time
249 employees located at all related facilities of the qualified company or a related company
250 located in this state;

251 (35) "Related facility base payroll", the annualized payroll of the related facility base
252 payroll or the total amount of taxable wages paid by the qualified company to full-time
253 employees of the qualified company located at a related facility in the twelve months prior to
254 the filing of the notice of intent. For purposes of calculating the benefits under this program,
255 the amount of related facility base payroll shall increase each year based on an appropriate
256 measure, as determined by the department;

257 (36) "Rural area", a county in Missouri with a population less than seventy-five
258 thousand or that does not contain an individual city with a population greater than fifty
259 thousand according to the most recent federal decennial census;

260 (37) "Tax credits", tax credits issued by the department to offset the state taxes
261 imposed by chapters 143 and 148, or which may be sold or refunded as provided for in this
262 program;

263 (38) "Withholding tax", the state tax imposed by sections 143.191 to 143.265. For
264 purposes of this program, the withholding tax shall be computed using a schedule as
265 determined by the department based on average wages.

266 2. This section is subject to the provisions of section 196.1127.

620.2015. 1. In exchange for the consideration provided by the tax revenues and
2 other economic stimuli that will be generated by the retention of jobs and the making of new
3 capital investment in this state, a qualified company may be eligible to receive the benefits
4 described in this section if the department determines that there is a significant probability
5 that the qualified company would relocate to another state in the absence of the benefits
6 authorized under this section. In no event shall the total amount of benefits available to all
7 qualified companies under this section exceed ~~six~~ ten million dollars in any fiscal year.

8 2. A qualified company meeting the requirements of this section may be authorized to
9 retain an amount not to exceed one hundred percent of the withholding tax from full-time jobs

10 that would otherwise be withheld and remitted by the qualified company under the provisions
11 of sections 143.191 to 143.265 for a period of ten years if the average wage of the retained
12 jobs equals or exceeds ninety percent of the county average wage. In order to receive benefits
13 under this section, a qualified company shall enter into written agreement with the department
14 containing detailed performance requirements and repayment penalties in event of
15 nonperformance. The amount of benefits awarded to a qualified company under this
16 section shall not exceed the projected net fiscal benefit and shall not exceed the least amount
17 necessary to obtain the qualified company's commitment to retain the necessary number of
18 jobs and make the required new capital investment.

19 3. In order to be eligible to receive benefits under this section, the qualified company
20 shall meet each of the following conditions:

21 (1) The qualified company shall agree to retain, for a period of ten years from the date
22 of approval of the notice of intent, at least fifty retained jobs; and

23 (2) The qualified company shall agree to make a new capital investment at the project
24 facility within three years of the approval in an amount equal to one-half the total benefits,
25 available under this section, which are offered to the qualified company by the department.

26 4. In awarding benefits under this section, the department shall consider the factors
27 set forth in subsection 2 of section 620.2010.

28 5. Upon approval of a notice of intent to request benefits under this section, the
29 department and the qualified company shall enter into a written agreement covering the
30 applicable project period. The agreement shall specify, at a minimum:

31 (1) The committed number of retained jobs, payroll, and new capital investment for
32 each year during the project period;

33 (2) Clawback provisions, as may be required by the department; and

34 (3) Any other provisions the department may require.

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